IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

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THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

CRP.No.2393 of 1998

T. Soundarapandian ..... Petitioner

-Vs-

G. Rathinam ..... Respondent

!For Petitioner: Mr. S. Subbiah

^For Respondent: Mr. T. Srinivasa Raghavan

Revision Petition filed against the fair and decreetal order, dated 24.3.1998, passed in RCA.No.31/1994, on the file of the Principal Subordinate Judge (Appellate Authority), Madurai, reversing the fair and decreetal order dated 5.4.1994, passed in RCOP.No.1/1992, on the file of the District Munsif, Madurai, Taluk, at Madurai (Rent Controller).

:ORDER

1.The landlord is the petitioner in RCOP.No.1/1992, before the District Munsif Court, Madurai Taluk, and the said Petition was filed under Section 10(2)(i) and 10 (3)(a)(ii) of the Tamil Nadu Buildings Lease and Rent Control Act, 1968, for eviction of the tenant on the ground that the tenant has committed wilful default in payment of rent and the petitioner requires the premises for his own use or for the use of any member of his family and in this case to run a shop for his son. The Rent Controller passed an order of eviction only on the ground of owner's occupation and rejected the ground of wilful default in payment of rent. The tenant preferred an appeal in RCA.No.31/1994, before the Rent Control Appellate Authority (Subordinate Judge), Madurai and the said appeal was allowed. Aggrieved by the same, the landlord has preferred this civil revision petition.

2.The case of the petitioner is that he is the owner of the petition premises and the respondent is a tenant on a monthly rent of Rs.125/- and the said rent is payable on or before 5th of every Tamil Calendar Month. The tenant is always irregular in payment of rent and he paid rents upto the month of Karthigai, Pramathootha year and afterwards failed to pay the rents and he was in arrears for 13 months from Pramathootha year, Margazhi month upto Prajyathpathy Margazhi month. The non-payment of rent by the respondent is wilful and wanton. Further case of the petitioner is that his son is working

in a grocery shop at Madurai and he requires the premises for the purpose of opening a grocery shop for his son. The requirement of the petitioner is bonafide and the request made by the petitioner was not complied with and hence, the petition.

3.In the counter filed by the respondent, it is stated that the tenancy is not according to the Tamil Calendar Month, but, it is only according to the English Calendar Month. The tenancy commences from 23 rd of every English Calendar Month and ends with 22nd of succeeding month. The monthly rent is Rs.55/-, excluding electricity charges and the tenant has been paying Rs.15/per month towards electricity charges. The petitioner is not in the habit of issuing receipts for the payment of rent, but, he has always been regular in payment of rent and he has not at all committed default. The respondent paid rents upto 22nd December 1991 and he was not at all in arrears. The requirement of the petition premises for the petitioner's son to run a grocery shop is not admitted. The petitioner does not at all require the petition premises for his son and the said requirement is not at all bonafide. The respondent also further stated that he came to the petitioner's premises about 17 years back and the initial rent was Rs.15/- per month and he gave an advance of Rs.300/- and the rent was increased subsequently and there was an increase in the advance amount also and the rent paid last was Rs.55/- and there was an advance of Rs.2 ,600/- with the petitioner.

4.It is further stated that the petitioner borrowed Rs.8,000/- from one Rajendran by executing a registered mortgage deed on 22.2.1988 in respect of adjacent portion, bearing door no.202. The petitioner also borrowed Rs.8,000/- from R. Rajendran, by executing an unregistered mortgage deed in respect of an another adjacent portion, bearing door no.202. The petitioner is financially weak and hence, he cannot start any business. When the respondent insisted the payment of the amount spent by him for repairs, instead of paying the amount, the petitioner became inimical and has filed the petition.

5.Heard the learned advocates for the petitioner and the respondent.

6.The Rent Controller has allowed the petition only on the ground of owner's occupation and rejected the case of the petitioner on the ground of wilful default and the landlord has not preferred any appeal as against the said order. But, however, the tenant preferred an appeal and the said appeal was allowed.

7.It is contended on behalf of the revision petitioner that though he has not preferred any appeal as against the finding of the Rent Controller, on the question of wilful default, he is entitled to raise the said plea before the revisional authority i.e. this court.

8.The learned advocate for the tenant has resisted the stand taken by the landlord on the ground that the petitioner not having preferred an appeal as against the findings of the Rent Controller, it is not open to him to raise the said issue before this court. It is also further pointed out that the landlord has not even made a ground in this revision petition and in the

absence of the same, the revision petitioner is not entitled to question the validity of the findings of the Rent Controller before this court.

9.Now, we have to consider, whether the revision petitioner, not having preferred an appeal as against the finding of the Rent Controller and also not having filed any cross appeal as against the appeal filed by the tenant and also not having raised any ground in this civil revision petition, is entitled to canvas the legality of the order, passed by the Rent Controller, in this civil revision petition.

10.The Revision Petitioner/landlord relied upon the following judgements to support his case.

11. In K.S. Sundararaju Chettiar Vs. M.R.Ramachandra Naidu (AIR-1994-SC-2129), the Supreme Court had an occasion to consider about nonmention of a reasonable ground for eviction in the notice for eviction. It was held, "such non-mention by itself cannot disentitle a landlord to claim eviction on such ground. If a claim for eviction founded on such ground in the petition for eviction is proved to be wellfounded and the same is consistent with the grounds on which eviction is permissible in law, the landlord will be entitled to a decree for eviction notwithstanding the fact that such ground was not mentioned in the notice for eviction." This decision does not at all favour the case of the petitioner, as the facts are totally alien to our case.

12.The case of Ruth Margaret Gonsalves Vs. K.T.H. Presses by its Proprietor, Kumar (1987-100-LW-258) deals with, non-availability of pleadings in the petition and in the said circumstances, it was held, " Pleadings in such matters cannot be construed with the strictness with which pleadings in civil suits are construed."

13.In M/s.Velmurugam Engineers by Prop. Raveendran Vs. A.Kaliappan (1 998-2-LW-666), it was observed by this Court (R.Balasubramanian, J.), "8. Though the Rent Controller ordered eviction under Section 10(3)(a)(iii) of the Act, the Appellate Authority in the appeal filed by the tenant chose to set aside that finding. The landlord had not filed any revision before this Court against that finding of the Rent Controller on his requirement under Section 10(3)(a)(iii) of the Act. In such a situation, can this Court go into it and the answer seems to be in the affirmative in view of the judgement of this Court reported in 1989-1-LW-(Summary of Judgements)-46." Summary of Judgement referred to above is as under:-
"It appears to be settled law so far as this Court is concerned that where a final order in rent control proceedings is in favour of the landlord, even though on certain grounds the claim for eviction has been rejected and it has been granted on some other grounds, it is permissible for the landlord to contend in a revision petition filed by the tenant that the order of eviction should be sustained on other grounds held against the landlord and that he is entitled to show that the finding recorded by the Appellate Authority against him was erroneous." (Full text of the case is not available for the present).
14.It is not in dispute that as against the order passed by the Rent Controller, rejecting the case of the petitioner on the ground of wilful

default, the landlord has not chosen to file any appeal nor the landlord filed any cross appeal also before the Appellate Authority. Even in the Revision Petition filed before this court, the landlord has not raised any such ground. In those circumstances, I am of the view that it is not open to the landlord to raise such a plea in this civil revision petition and if it is allowed, the opposite party would be caught unaware of the matter, which is not permissible. If the landlord or the tenant is allowed to raise such a plea in the civil revision petition, which he has not chosen to do so before the courts below, then the very purpose of filing of appeal or revision would also be defeated and I feel that we have to put to an end to this type of course of action and therefore, I am of the view that the petitioner is not entitled to raise such a plea before this court, who having failed to prefer an appeal as against the order of original authority, before the Appellate Authority concerned. In fact, the decision relied upon by the revision petitioner also do not support the case of the petitioner and therefore, the contention of the revision petitioner is rejected. Hence, it has become unnecessary to traverse more about the wilful default, said to have been committed by the tenant in this case.

15.Coming to the next question with regard to the requirement of the petition premises for the landlord, it is the case of the petitioner that he is having two sons, viz. Panneerselvam and Manikandan and the former got married and he was employed in one dhall shop and only for him, the petition premises is required to open a grocery shop. The other son is studying in VI Standard. As his son has got experience only in running a grocery shop, the petitioner and his son jointly wanted to open a grocery shop and therefore, the requirement is bonafide. The petitioner also in his evidence admitted that he owns three shops, apart from the petition premises. One shop was let out for carrying on vegetables business and in the other shop, fruit business is being carried on and rice business is being carried on in another shop. The petitioner's brother-in-law is having one shop. The petitioner had mortgaged these shops and borrowed amounts and allowed the persons, who had advanced money under the mortgage and put them in possession in the respective shops to enjoy the same in lieu of interest, except the petition premises. Since the date of marriage of the petitioner's son in 1990, he wanted to set up a business for his son, for which, he requested the respondent to vacate, but, he has not complied with the same.

16.Panneerselvam, petitioner's son was examined as PW.2, who in his evidence would state that he made all arrangements to run a grocery shop and he had already possessed weighing stones, and if necessary, he would purchase a new one and as he has been working in a dhall shop, he had enough experience to run a business of his own in the petition premises and therefore, the petition-shop is required bonafidely for their own use.

17.On the contrary, the learned advocate for the respondent/tenant would point out the admission made by the petitioner in the crossexamination, wherein he has admitted that the other shops have fallen vacant, now and then and people have come and gone as tenants. The petitioner had not chosen to occupy any one of the shops, fallen vacant during these period. Pointing out this

portion of the evidence of the petitioner, the learned advocate for the respondent/tenant would content, if the requirement of the petitioner is bonafide, he could have occupied the other shops, as and when they have fallen vacant and instead of doing so, the petitioner has chosen to evict the respondent with some ulterior motive and purpose and there is absolutely no bonafide on the part of the petitioner. The respondent also pointed out that one fruit shop is vacant and it could be occupied by the petitioner, but, instead of doing so, the petitioner is seeking eviction of the respondent from the petition premises and therefore, there is no bonafide on the part of the petitioner. It is also pointed out that the petitioner himself has admitted that he has been paying electricity charges for the fruit shop, which is lying vacant, which shows that the said shop is in his possession, but the petitioner has not chosen to occupy the same.

18.The petitioner relied upon the following judgements to support his bonafide requirement.

19.In Sarla Ahuja Vs. United India Insurance Company Limited (1999-1-LW-698-SC), it was held, "The Rent Controller approved the claim of the landlady as bonafide after taking into account the aforesaid broad aspects. It cannot be said that the Rent Controller had taken into account irrelevant factors in reaching the conclusion. Hence, the High Court improperly exercised its revisional jurisdiction in upsetting the findings of the Rent Controller." In this case, we are not able to know, whether the Rent Control Appellate Authority had approved the order passed by the Rent Controller or reversed.

20.In Dattaraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and another (1999-4-SCC-1), It was observed, "A. Rent Control and Eviction - Bona fide requirement of landlord - Premises reasonably and bonafidely required by the landlord - The use of the two terms together indicates that the requirement must be really genuine from any reasonable standard - However, the genuineness of the requirement is not to be tested on a par with the dire need of a landlord because the latter is a much greater need."

21.In Ramkubai (Smt) Deceases by LRs and others Vs. Hajarimal Dhokalchand Chand and others (1999-6-SCC-540), it was held, "A. Rent Control and Eviction - Bonafide need of landlord - Right of individual members of landlord's family to set up own independent businesses - Bonafide need of setting up business of unemployed son in suit premises cannot be negatived on grounds that such person has, since the litigation began, taken up other employment or work."

22.In Akhileshwar Kumar and others Vs. Mustaqim and others (2003-1SCC-462), it was held, "3. In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that Plaintiff 1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. Plaintiff 1 and his father both have deposed to this fact. Simply because Plaintiff 1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has overlooked is the evidence to the effect, relied on by the

trial court too, that the husband of Plaintiff 4, i.e. son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons."

23.There is absolutely no quarrel over the principles laid down in the above said judgements. But, in our case, the petitioner/landlord has admitted that the other shops have fallen vacant now and then, but, the landlord has not chosen to occupy any one of the shops to meet his requirements. Of course, the tenant cannot dictate to the landlord that he could occupy this shop or that shop and it is always open to the landlord to chose the premises, which is convenient and suitable for him. But, in our case, it is not the case of the revision petitioner that the shops, which have fallen vacant, were not suitable to carry on the business and only in the said circumstances, I am unable to accept the case of the petitioner and I have to come to the conclusion that there is no 'bonafide' on the part of the petitioner in seeking eviction of the respondent/tenant from the petition premises. It is also to be noticed that another shop is lying vacant, for which, the petitioner has been paying electricity charges and keeping that shop vacant, which shows the petitioner's intention, to evict the respondent from the petition premises, prima facie, appears to be malafide and not bonafide.

24.For the reasons stated above, I am of the view that the revision petitioner is not entitled to succeed and the civil revision petition is liable to be dismissed.

25.In the result, the civil revision petition is dismissed. No costs.

Index: Yes
Web: Yes
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To:
1.The Principal Subordinate Judge (Appellate Authority), Madurai
2.The District Munsif, Madurai, Taluk, at Madurai (Rent Controller)
3.The Record Keeper, VR Section, High Court, Madras

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